



## FAIR POLITICAL PRACTICES COMMISSION

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**Re: Your Request for Advice  
Our File No. A-00-237**

Dear Mr. Olson:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act ("the Act").<sup>1</sup> You have requested advice on behalf of Warren Salmons, City Manager for the City of Dixon concerning his duties under the conflict-of-interest provisions of the Act. Please note that this letter should not be construed as advice concerning any conduct that may have already taken place. Moreover, this advice is limited to the facts presented. The Commission does not act as the finder of facts with regard to advice.<sup>2</sup> (*In re Oglesby* (1975) 1 FPFC Ops. 71.)

### QUESTION

Does the City Manager have a conflict of interest with respect to his participation in City decisions on the proposed Southpark development?

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<sup>1</sup> Government Code sections 81000 – 91015. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

<sup>2</sup> Please note that the Commission has adopted amendments to the conflict-of-interest regulations discussed below. We have indicated in this letter the new standards that will apply once the amendments are effective. The anticipated effective date of these amendments is February 1, 2001. Further, as of January 1, 2001, section 87103 has been amended. We have noted the changes in this letter where applicable.

## CONCLUSION

Under the facts presented, the City Manager will not have a conflict of interest with respect to the Southpark project. The development in question will not have a reasonably foreseeable material financial effect on the City Manager's economic interests, as discussed below.

## FACTS

### 1. City Development

The City of Dixon has approximately 15,000 residents and 5,000 residential dwellings, predominantly single family detached homes.

- *In 1986*, the voters approved a growth management initiative, Measure B. Measure B (reaffirmed by voters in 1996) limits new residential development to a maximum of three percent per year (approximately 150 properties in 1999). Currently there are fewer than three dozen developable single-family lots left in the City. One infill residential subdivision of six lots has been approved since 1997.
- *In 1995*, the City Council approved a General Plan amendment for the annexation and development of two new, predominately residential, growth areas known as Southwest and Southpark.
- *In 1996*, the Southwest and Southpark areas were annexed. The growth areas are expected to accommodate more than 2,000 residential dwellings over the next sixteen to twenty years, but are currently predominately agricultural. At the same time that the General Plan was amended, a zoning ordinance was adopted consistent with the General Plan amendments to permit development of Southwest and Southpark.

**Southpark:** Southpark is primarily being built by one developer/landowner. The development plan for Southpark will likely take the form of a planned unit development (PUD) consisting of approximately 807 dwelling units. The developer has presented the City with a refined master plan diagram for the PUD, filed the General Plan amendment, submitted the re-zoning and tentative map applications, and provided funds for the City to hire an outside planning consultant to prepare a Supplemental Environmental Impact Report (SEIR). The SEIR has passed administrative review and the draft document is in the 45-day review and comment period. The developer is working with the City public works and engineering staff to define, design, and determine financing for the necessary infrastructure to serve the area. It is likely that public hearings on the Southpark General Plan and zoning amendments (along with other related issues) will come before the Planning Commission and City Council.

**Southwest:** Southwest involves several developers/landowners and the development plan for this area will likely be a specific plan. Hearings are not expected until 2001.

**Other Developments:** In addition to the two new designated growth areas, there are efforts underway by various landowners and developers to request City consideration for General Plan amendments and re-zonings to permit residential development in areas currently zoned for non-residential development. One such effort involved a 40-acre plot currently designed for commercial and office use. The landowner is attempting to partially re-designate the property for residential use and has filed an application to do so. This application will necessitate an evaluation of General Plan and zoning amendments and a determination regarding the nature and extent of environmental review. Any new developments in this area would be subject to the provisions of Measure B. According to your facts, as discussed more fully below, the City Manager does not have an economic interest in any of the applicants.

Several other decisions still must be made before residential development may occur in the new growth areas. For example, minor amendments to the General Plan and zoning ordinance are needed. These refinements to the General Plan and zoning ordinance will not result in any increases or decreases in residential development yield, or changes in the basic land use themes originally approved in 1995. Infrastructure financing, design review, drainage and sewer planning, and supplemental environmental analyses must also be resolved before residential development may commence.

## 2. Southpark Development Decisions<sup>3</sup>

According to your letter, the developer has presented the City with:

- *A refined master plan diagram for the PUD.*
- *A General Plan amendment.*
- *Re-zoning and tentative map applications.*
- *A Supplemental Environmental Impact Report (SEIR) which has passed administrative review and is in the 45-day review and comment period.*
- *Defining, designing and determining financing for the necessary infrastructure to serve the area.*

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<sup>3</sup> The Southwest decisions that you also describe are not anticipated to be before the City until 2001, and we do not have the specific facts to advise you at this time. Similarly, the same would be true for the landowner who has applied to partially re-designate 40 acres of property for residential use. This application will necessitate an evaluation of General Plan and zoning amendments and a determination regarding the nature and extent of environmental review. However, it appears this decision too, is at a preliminary stage.

The City Manager will not be making these decisions, but will be participating in the decisions as follows:

- *The City Manager will be directly involved in the preparation of the staff reports and staff recommendations, as well as reviewing the staff reports on the projects. The reports deal with approval, denial or conditional approval of project entitlements (i.e., refinements to the General Plan and zoning ordinance, tentative maps, development agreements, and environmental review).*
- In addition, the City Manager will review the City Attorney's report to the City Council regarding how the Southpark project will comply with Measure B. He will participate in discussions between the City Attorney, the development community, and the City Council to develop a system of allocating housing development allotments, consistent with the constraints of Measure B.
- As to the proposed General Plan amendments and rezoning request on the 40 acres, the City Manager will be actively involved in the application and assist with the preparation of the staff report and recommendations, and play an advisory role to the City Planning Commission and City Council.
- The City Manager will assist the planning staff in handling community development and land use planning processes and procedures, and advise the Planning Commission and City Council on these matters.
- The City Manager will also assist in overseeing the progress of residential development in the new growth areas, including matters of financing, planning, management, environmental analyses, compliance with the master plan and Measure B, and other issues which need to be resolved before residential development may be approved to begin.
- The City Manager will also assist in the planning and oversight of infrastructure development for the new growth areas (infrastructure includes drainage, sanitary sewer and traffic issues). The City Manager, along with the City's Finance Director, will advise the Planning Commission and City Council regarding any proposed public financing of infrastructure. The financing of the infrastructure may involve public financing decisions for both projects. The City Manager will also participate in negotiations and discussions with a variety of entities to find solutions to infrastructure issues to serve the area.
- Finally, the City Manager will also assist in public hearings on the new development General Plan and zoning refinements, and assist in responding to and making recommendations (including preparation, evaluation, and presentation of recommendations) relative to requests for General Plan amendments.

### 3. Income to the City Manager's spouse

The City Manager's spouse, Susan Salmons, is a real estate agent for Century 21, Distinctive Properties Inc. (DPI). DPI is a recent consolidation of three Century 21 brokerages from the cities of Dixon, Fairfield and Vacaville. Mrs. Salmons has no ownership interest in DPI. DPI specializes in residential resales and residential property management. The Dixon component of DPI was known as Green Gables Realty. In 1999, DPI through Green Gables Realty, was one of 50 real estate brokerage firms active in the City of Dixon. DPI accounted for approximately 20% of residential sales transactions in Dixon, the vast majority of which were resales of existing homes. You state that the figures for 2000 are projected to be similar. Specifically, DPI was responsible for sales of 90 homes out of some 425 sold in 1999. The average sale price of a home handled by DPI in 1999 was \$159,373. DPI has not been (and will not be) involved in the sale or purchase of "new production homes."

DPI does not have a "new homes" division, and has no plans to develop one. Further, new production homebuilders and developers rely on "in-house" staff to initiate and close transactions. The sales techniques of 'new home' agents is quite different from those of 'traditional' agents, consequently, new production home developers prefer to use their own agents who exclusively sell new homes. In addition, the current policy of many new production homebuilders is that they make no commission payments to the outside agents of buyers. You also state that market research shows that new production homes in Dixon are not built for the local market. These developments are directed towards the Sacramento and Bay Area regional markets. Thus, buyers of these new production homes generally come from outside the City of Dixon.

Susan Salmons was not involved in any Dixon real estate transactions prior to 1999. In 1999, she was involved in 4 transactions (as listing agent and/or purchasing agent). In 2000, thus far, she has been involved in 14 ½ transactions. She currently has one client in escrow, which is expected to conclude with an additional transaction. The commission from these transactions is commonly split four ways, roughly 1.5 percent to each listing broker and agent, and 1.5 percent to both the purchasing broker and agent.

The City Manager's spouse intends to continue selling real estate within the City of Dixon, but does not anticipate any foreseeable increase in her business or that of Distinctive Properties Inc., as a result of new development in Dixon.

### ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. In order to determine whether the prohibition in section 87100 applies to a given decision, regulation 18700 provides the following eight-step analysis.

## Steps One and Two.

The first two steps in the analysis to determine (1) whether the individual is a "public official" and (2) whether the individual is making, participating in making, or influencing a governmental decision, are not at issue in your letter. As City Manager in Dixon, Mr. Salmons is a "member, officer, employee, or consultant of a state or local government agency" and, therefore, is a "public official" subject to the conflict-of-interest provisions of the Act. (Section 82048; Reg. 18701(a).) Additionally, the City Manager intends to "participate" in the decisions described above. A public official "participates in a governmental decision" when, acting within the authority of his or her position and without significant substantive or intervening review, he or she negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. (Reg. 18702.2.)

## Step Three: Does the City Manager have economic interests?

The third step is to identify the economic interests that may be impacted by the decision. Under section 87103 of the Act, there are six different types of economic interests that may result in a conflict of interest for a public official. The economic interests pertinent to your question are as follows:

1. A public official has an economic interest in any person from whom he/she has received income aggregating \$250 within 12 months prior to the time when the relevant governmental decision is made. (Section 87103(c); Reg. 18703.3.) "Income" includes an official's community property interest in the income of his or her spouse. (Section 82030.) Thus, DPI is considered a source of income to the City Manager if his spouse has received \$500 or more from DPI in the 12 months prior to the decision.<sup>4</sup>

Since the income the City Manager's spouse receives is commission income,<sup>5</sup> regulation 18703.3(c)(4) provides that for purposes of determining whether disqualification is required under the provisions of sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction must be attributed to:

"(i) The broker and brokerage business entity under whose auspices the agent works;

"(ii) The person the agent represents in the transaction;  
and

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<sup>4</sup> As of January 1, 2001, the threshold for disqualification in section 87103 based on income will be \$500. Thus, the City Manager's spouse would need to receive \$1,000 from a person for that person to be a potentially disqualifying financial interest of the City Manager.

<sup>5</sup> "Commission income" means gross payments received as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.

“(iii) Any person who receives a finder’s or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.” (Regulation 18703.3(c)(3)(C).)

For example, assume that the City Manager’s spouse sold a home on behalf of the seller and received a \$2,000 commission from the seller on that sale. Under regulation 18703.3(c)(4), both DPI and the seller would be considered a source of \$2,000 in commission income to the official’s spouse. The City Manager’s community property share would be \$1,000.

As noted above, the client that the City Manager’s spouse represented in a given transaction is also an economic interest of the City Manager. However, since your facts do not indicate that the decision in question will impact any clients of the City Manager’s spouse, we have not gone on to analyze the foreseeability or materiality of financial effects on these economic interests. If you believe that clients may be affected, you should request additional advice. Moreover, you have not indicated that any of the applicants are sources of income to the City Manager or his spouse. Obviously, should any of the applicants also be economic interests of the official and his spouse, this would change the analysis in this letter.

2. A governmental decision may also have a personal financial effect on a public official. If the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing, the official has an economic interest in the decision. (Reg. 18703.5.)

Thus, for purposes of the remaining analysis, financial effects on both DPI and Ms. Salmons’ income must be considered to determine if the financial effects will be material and foreseeable.

**Step Four: Are the City Manager’s economic interests directly or indirectly involved in the decision?**

Regulation 18704.1(a) provides that a person, including business entities such as DPI, is directly involved in a decision before an official’s agency when that person, either directly or by an agent: (1) initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or; (2) is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person. Under your facts, DPI is not directly involved in the decisions in question. However, it still must be determined if DPI will be foreseeably and materially affected by the decision.

With respect to personal financial effects on the City Manager’s spouse, regulation 18704.5 provides that “A public official or his or her immediate family are

deemed to be directly involved in a governmental decision which has any personal financial effect on him or her or his or her immediate family."

**Step Five and Six: Will the financial effect of the decision on the City Manager's economic interest be material and reasonably foreseeable?**

Once a public official identifies his or her relevant economic interests, the official must evaluate whether it is reasonably foreseeable that the decision will have a material financial effect on one of those economic interests. This determination takes two steps. First, the official must find and apply the applicable materiality standard set forth in Commission regulations. (Reg. 18700(b)(5), Reg. 18705, et seq.) After finding the applicable materiality standard, the official must then decide whether it is reasonably foreseeable that the standard will be met. (Reg. 18700(b)(6).)

Generally, the foreseeability and materiality analysis must be applied on a *decision-by-decision basis*. For example, even if the City Manager were disqualified from decisions affecting the existence of the developments in question, he may participate in implementation decisions so long as each of the following apply:

- (1) The decisions for which he has a disqualifying financial interest are segregated and decided first;
- (2) The remaining decisions will not result in reopening or in any way affect the decisions from which he was disqualified; and
- (3) The decisions will not independently have a material financial effect on his economic interests.

We note that many of the decisions in question may be considered "implementation decisions." For example, the City Manager will review the City Attorney's report to the City Council as to how the Southwest and Southpark projects will comply with Measure B, and participate in discussions between the City Attorney, the development community, and the City Council to develop a system of allocating housing development allotments consistent with the constraints of Measure B. Assuming these decisions do not result in more or less development, but rather are only an allocation of limited development previously approved, these would appear to be implementation decisions.

This may also be true with respect to other decisions as well. For example, (1) the determination of the *procedures* to be used in considering community development and land use planning proposals, (2) assistance in the oversight of the progress of residential development in the new growth areas (including matters of financing, planning, management, environmental analyses, compliance with the master plan and Measure B), and (3) assistance in the planning and oversight of infrastructure development for the new growth areas, *may* also be implementation decisions *if* all of the factors described above are met.



If these decisions are indeed "implementation decisions" (as described above) the City Manager could participate in the decisions irrespective of potential conflicts of interest with respect to the project as a whole, so long as the implementation decisions do not independently create a conflict of interest. In other words, the City Manager will still need to assess whether the implementation decision will have a foreseeable and material financial effect on the economic interests of the official as described below.

### Materiality

Where DPI is indirectly involved in a decision, regulation 18705.1(b)(7) provides that the effect of a decision is material if the decision affects the entity's gross annual receipts, expenses, assets or liabilities to the extent set forth in the applicable provision of the regulation. For example, the lowest standard in regulation 18705.1 (if it is applicable to DPI) provides that a financial effect is considered material if any of the following apply:

"(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

"(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

"(C) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more."<sup>6</sup>

With respect to personal financial effects on the City Manager's spouse, regulation 18705.5 provides that "[a] reasonably foreseeable personal financial effect is material if it is at least \$250 in any 12-month period."

### Foreseeability

Regulation 18706 provides that "[A] material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§18704, 18705) applicable to that economic interest will be met as a result of the governmental decision." A financial effect need not be a certainty to be considered reasonably foreseeable. On the other hand, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

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<sup>6</sup> The Commission has adopted amendments to these thresholds. Assuming that this is the provision that applies to DPI, once the amendments become effective, each of these materiality thresholds will be doubled (\$20,000, \$5,000, and \$20,000, respectively).

"[T]he question of whether financial consequences upon a business entity are reasonably foreseeable at the time a governmental decision is made must always depend on the facts of each particular case." (*In re Thorner*.) In each case, the official must look at the facts surrounding each decision, and the nature of the economic interest to determine whether it is reasonably foreseeable that the decision is substantially likely to cause a material financial effect as set forth above. In the *Thorner* Opinion, for example, the Commission compared a situation where a contractor who was a regular customer of the public official's construction business (McPhail's), and was preparing to bid on or had bid on a project that was the subject of the decision (described in the opinion as situation c), to a similar situation where the contractor was already awarded the contract, but had not yet purchased or agreed to purchase any of the official's products for the project (situation d).

The Commission stated:

"There is a significant difference between the two situations. In example (d), although there is no certainty that McPhail's will receive business, there is a high probability that it will since the contractor who has been awarded the contract is a regular customer. Although there is no agreement, express or implied [citation] between McPhail's and the contractor, there is, without question, a sufficient likelihood that McPhail's will receive business to make the financial effect on Director MacPhail 'reasonably foreseeable.' "

"In example (c), on the other hand, an extra degree of remoteness is added to the foreseeability of the financial effect by reason of the fact that the contractor has not yet been awarded the contract, but merely has entered a bid or is preparing to do so. McPhail's will benefit only if the contractor's bid is successful and the contractor follows its normal practice of purchasing from McPhail's."

As can be seen from the analysis in the *Thorner* Opinion, the determination of foreseeability is in essence a factor analysis. In *Thorner*, the Commission considered:

(1) *The Historic Pattern of Business in the Jurisdiction*: "McPhail's does business almost entirely within Sonoma and Marin Counties, and does over half of its business within the MMWD [Marin Municipal Water District]." "Dinwiddie has constructed only one project in the MMWD in the past ten years."

This concept has also been applied in advice letters. For example, in the *Whittier* Advice Letter, No. A-00-164, we advised:

"Coldwell Banker, Brokers of the Valley, could foreseeably benefit from the change if it resulted in increased sale prices for

residential properties that are able, after the decision, to contest changes in use on adjacent industrial properties. Conversely, it might be adversely affected if sales prices of industrial property adjacent to residential property decrease due to the zoning amendment. However, Councilmember Savidge indicates that Coldwell Banker, Brokers of the Valley, does not have any listing in St. Helena of property that is residential and next to an industrially zoned property, or of property that is industrially zoned and adjacent to a residential property. Therefore, we conclude that it is not reasonably foreseeable that this particular amendment to the zoning ordinance will affect Coldwell Banker, Brokers of the Valley, in an amount equal to or exceeding the thresholds set forth in 18705.1(b)(7). As such, Councilmember Savidge does not have a conflict of interest and may participate in the decision to amend the zoning ordinance."

(2) *The Market Share and/or the Existence of Substantial Competition:* For example, in *Thorner* the Commission stated: "McPhail's has numerous competitors in all of these areas, except ready-mix concrete, where it has only three major competitors. It's estimated that relative market share within the MMWD of the foregoing products is: ready-mix concrete-- less than 33 1/3 percent; building materials--less than 25 percent; major appliances--less than 20 percent; fuels--over 50 percent of bottled gas, but less than two percent of the total market since most homes are served with natural gas by Pacific Gas and Electric; heating, air conditioning and sheet metal products--less than five percent." In addition, in the *Bardos* Advice Letter, No. A-99-199, we advised:

"The question is essentially whether the Project will so significantly increase business opportunities for Penna Realty that the increased opportunities constitute a reasonably foreseeable material financial effect. (*Thorner, supra.*) The Project will add 36 homes to the City's approximately 20,000 single-family residences, that is, to the number of homes that will eventually be available in the resale market in which Penna Realty participates. Penna Realty has about 2 percent of that resale market. The Project will add only one commercial facility to the pool of available commercial leasing and property management opportunities.

".....

".... Under the facts you present on Councilmember Penna's behalf, decisions about the Project are not substantially likely to have a material financial effect on Penna Realty, as material is defined in Regulation 18705.1(b)(7). Adding 36 residential units to an existing 20,000 residential units in a market in which Penna Realty has only 2 percent, is not substantially

likely to result in Penna Realty reselling more houses than it would otherwise. Adding one commercial property, of a type which Penna Realty has not historically handled, in a City the size of South San Francisco, is not substantially likely to result in Penna Realty selling or leasing or managing more commercial properties. Therefore, Councilmember Penna does not have a conflict of interest in Council decisions about the Project."

(3) *The Existence of Affirmative Acts on the part of the Official to take Advantage of the Financial Effects of the Decision:* In *Thorner*, the Commission stated: "As a general rule, however, when the bid is made with a serious hope that the contract will be awarded to McPhail's, we think a financial effect on McPhail's is reasonably foreseeable even if there is substantial competition. The statute requires foreseeability, not certainty." *Thorner* continues, "Director MacPhail has no known connection with the project, although McPhail's, Inc. later may bid on or supply to the project certain materials. On these facts alone, we cannot find a reasonably foreseeable financial effect on McPhail's. McPhail's has numerous competitors in each product it sells, except ready-mix concrete (for which there are three major competitors). The situation is unlike that of *United States v. Mississippi Valley Generating Company* ... where 'there was a substantial probability that, because of its prior experience in the area of private power financing, First Boston would be hired to secure the financing....'"

In the *Teasley* Advice Letter, No. I-97-545, we advised:

"Your questions indicate that you and other agents of Coldwell Banker Town & County intend to take advantage of the business opportunities that will arise as a result of the development at Hidden Creek Ranch (e.g., becoming a listing or buyers' agent when homes or commercial development built under the specific plan are put on the resale market; becoming a listing agent for home owners who want to sell their existing homes in order to purchase new homes built under the specific plan; becoming a referring source for resale listings for one or more merchant builders; opening a New Home Sales Division; selling parcels owned by the seven separate owners). Therefore, it is reasonably foreseeable that approval of the specific plan will have a financial effect upon you and Coldwell Banker Town & Country, a potentially disqualifying source of income to you...."

(4) *The Scope of the Governmental Decision in Question:* In *Thorner*, the Commission reached different conclusions with respect to specific variance application decisions (where the decision affected single owners), in contrast to a moratorium decision (that effected the entire jurisdiction). "It is not questioned that building activity within the MMWD would increase as a result of a decision to lift the moratorium. This increase in building activity would provide significant opportunities for McPhail's to increase its sales within the MMWD. Moreover, the likely financial effect on McPhail's,

Inc. would be both material and reasonably foreseeable." (See also, *Bardos Advice* Letter discussion above.)

(5) *Intervening Contingencies*: The existence of intervening events that must occur before a financial benefit will result must also be considered. While not synonymous with a time limitation, obviously the further into the future the financial effect will occur, the more likely there will be intervening contingencies. "In example (c), on the other hand, an extra degree of remoteness is added to the foreseeability of the financial effect by reason of the fact that the contractor has not yet been awarded the contract, but merely has entered a bid or is preparing to do so. McPhail's will benefit only if the contractor's bid is successful and the contractor follows its normal practice of purchasing from McPhail's."<sup>7</sup>

When these factors are applied to the facts as you describe them, we conclude that it is not reasonably foreseeable that the City Manager's economic interests will be materially affected as a result of the decisions in question.<sup>8</sup>

- While DPI has currently 20 percent of the real estate sales in the City, neither DPI nor the City Manager's spouse will be able to take advantage of sales in the development, once approved and completed, since the developer will be selling these homes exclusively by means of in-house staff. At best, DPI will be able to take advantage of homes in the development if and when the homes are resold. Any estimation of the number of resales or when they would occur is subject to a variety of contingencies and assumptions. Yet, despite these contingencies, in light of DPI's large market share (20%) and the large size of the anticipated development (approximately 807 in Southpark alone, 2000 in the entire area), foreseeability may still exist under your facts.
- However, Dixon is also subject to growth limitations. Under Measure B, growth in the City is limited to 3 percent per year. This will limit the new development in the City to smaller annual increments. Thus, while the overall planned development is very large in contrast to the current number of units in the City, the limit on development makes the effect of the decision more akin to a vote on a series of smaller developments parceled out over a number of years.<sup>9</sup> Since the development will be phased in over a number of years, the likelihood of the financial effect reaching the applicable materiality threshold in the regulation is reduced.
- Finally, while there may be some incidental increases in sales among existing homes each year caused by Dixon residents selling their homes and moving into the new development, the extent of these sales and DPI's ability to take advantage of the sales

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<sup>7</sup> Of course, there may be other factors that are pertinent to the determination of whether a financial effect is reasonably foreseeable. This is not intended to be either an exclusive or mandatory list.

<sup>8</sup> The foreseeability discussion below applies equally to the materiality of the financial effect on DPI and the City Manager's spouse.

<sup>9</sup> The growth areas are expected to accommodate more than 2,000 residential dwellings but you do not expect build out for the next sixteen to twenty years.

is speculative at this time. You state that you believe that most of the buyers of the new homes will not be from Dixon; if this is the case, the resales in the community at large caused by the new development may be minimal. In addition, Measure B, again, by limiting development to small annual increments also presumably reduces any resales resulting from residents moving into the new homes.

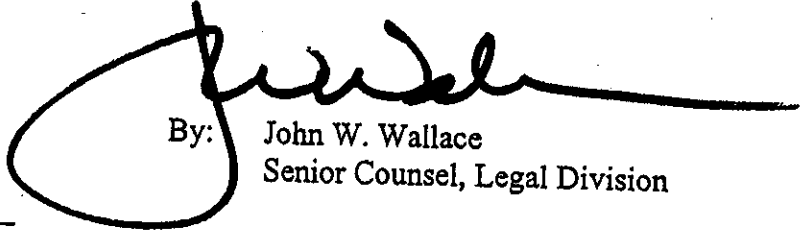
Based on the totality of the facts and circumstances, we conclude that it is not reasonably foreseeable that the decisions in question will have a material financial effect on the economic interests of the City Manager. The totality of the facts and circumstances, to use the terminology in the *Thorner* Opinion, create extra degrees of remoteness to the anticipated financial effect of the Southpark decisions on the City Manager's economic interests. However, the application of the conflict-of-interest rules must be carried out on a decision by decision basis and based on the specific facts. If the facts change, such as Measure B being repealed, or the decision becomes subject to an exemption from Measure B, the advice contained herein may no longer be applicable.

We do not have sufficient information about the other decisions; but assuming all of the facts above are true with respect to these other new developments, the same analysis would apply. You may write for further advice when the other decisions become more concrete.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Sue Ellen Wooldridge  
General Counsel

By:  John W. Wallace  
Senior Counsel, Legal Division

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